Before the
Federal Communications Commission
Washington, DC 20554

In the matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	

To: The Federal-State Joint Board

REPLY COMMENTS OF

UNITED STATES CELLULAR CORPORATION

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SUMMARY

Choices in telecommunications services and providers must be promoted for all Americans. Universal service support mechanisms must promote efficient investment. The FCC's decision to make "portable" per-line support available to competitive eligible telecommunications carriers ("CETCs") is competitively neutral, creates appropriate incentives, and has yielded enormous benefits in rural areas where CETCs have been designated.

The current system promotes artificial monopolies in many areas that would support competition if the playing field were leveled. By making *all* support explicit and portable to all eligible carriers, the Commission will accelerate investment in rural areas, fulfilling the mission of universal service, to extend the supported services throughout rural America.

USCC has been designated in several states and is investing high-cost support in facilities and services to consumers in areas in need of a reliable alternative to wireline service. The per-line support mechanism works because it requires CETCs to invest in an area based upon sound market-based principles, not upon the carrier's desire to be "made whole." Any decision to pay CETCs based on recovery of their own costs would needlessly expand the fund and encourage inefficient investment.

For similar reasons, rural ILECs should be transitioned to receiving support based on their forward-looking economic costs. A forward-looking methodology will accomplish one critical objective – eliminating the incentive for ILECs to make inefficient investments in order to garner support.

Providing support to CETCs based on the per-line costs of the incumbent carrier provides precisely the correct incentives to cause more efficient carriers to enter. Moreover, disaggregation of support will more accurately target support to high-cost areas, encouraging investment beyond major towns and highways while not providing uneconomic support to competitors in low-cost areas.

For eight years, the Commission has consistently advanced the twin goals of providing universal service while promoting competition throughout rural America. Calls to go back to insulating incumbents from competition must be rejected in favor of fulfilling the goals Congress set before the Commission. Those goals are today being carried out by USCC and other CETCs who are aggressively investing in new facilities to improve service to consumers and make inter-modal competition a reality for consumers in rural areas.

USCC urges the Joint Board to make choices consistent with the FCC's core principle of competitive neutrality, to remove all implicit sources of support and encourage competitors to enter as ETCs throughout the nation so as to benefit rural consumers, not individual carriers.

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United States Cellular Corporation ("USCC"), by counsel and pursuant to the Commission's Public Notice, "Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support," 19 FCC Rcd 16083 (Jt. Bd. 2004) ("*Public Notice*"), hereby provides the following reply comments.

I. Introduction.

USCC provides PCS and cellular services in 44 MSAs, 100 RSAs, 1 MTA and numerous BTAs throughout the country. Roughly half of the company's customers reside in rural America. The company is well versed in the ETC designation process. USCC has received ETC status and is currently receiving high-cost support covering operations in Washington, Iowa, Wisconsin and has just recently been designated in Oregon and Oklahoma. USCC has customer satisfaction levels that exceed every industry metric and as a result its churn rates are among the best in the industry.

As such, USCC is qualified to provide the Commission with comments on, (1) how the process for obtaining ETC status can be improved, (2) moving forward on the twin goals of advancing universal service and introducing competition to rural areas, and (3) why the FCC has to date provided exactly the correct incentives for rural CMRS carriers – especially those that are invested in their communities – to improve this nation's critical wireless infrastructure.

USCC comes before this Commission seeking a level playing field and fair rules that permit competitive ETCs ("CETCs") to drive infrastructure development, advance universal service, and bring the benefits of *facilities-based* competition to rural areas. USCC is today using high-cost support to further Congress' twin goals of advancing universal service and introducing competition to rural areas. The FCC has to date provided exactly the correct incentives for rural CMRS carriers to obtain ETC status and improve this nation's critical wireless infrastructure. As a carrier who serves extensive rural areas, USCC is qualified to provide the Joint Board with commentary on the questions raised in the above-referenced Public Notice.

II. Rural America Needs Improved Wireless Service Quantity and Quality.

USCC's experience is clear: Rural America wants wireless telecommunications services that are comparable to those in urban areas. This is no small matter. Wireless communications services are critical to health and economic development in rural areas. For example, the Maine Sheriffs Association recently passed a resolution supporting prompt action on USCC's petition for ETC status in Maine because it believes wireless service must be improved in Maine.[1]

USCC has met with state public utility commissioners, and members of the U.S. Congress, virtually all of whom describe receiving complaints from consumers about the number of wireless carriers actually providing services beyond big cities and major roads. USCC's experience belies OPASTCO's contention that CMRS providers "have been successfully serving rural markets for many years now without any high-cost funding."[2] OPASTCO selectively refers

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1 A copy of the resolution is attached hereto.

2 OPASTCO Comments at p. 14.

to a portion of the *Ninth CMRS Competition Report* stating that counties with fewer than 100 persons per square mile have an average of 3.9 wireless competitors.[3] This statistic is misleading because, in rural America, oftentimes there are multiple wireless carriers with ***some*** facilities in a county seat or primary town, which is a population center and usually located near a major road. But beyond the main town or major roadways, service is often limited to one carrier, or no carrier. In such areas, additional cell sites must be constructed to improve service quality.

Tellingly, OPASTCO ignores the critical finding that counties in which three or more wireless carriers provide service constitute only 62% of the nation's land area.[4] The remaining 38% of the country is precisely where Congress intended for universal service to drive infrastructure investment so that consumers can have the benefit of the kinds of telecommunications services available in urban areas. These are precisely the areas where Congress intended for universal service to drive infrastructure investment so that consumers can have the benefit of advanced telecommunications services.

III. The Stated Purpose of Universal Service as Mandated by Congress Must be Faithfully Honored.

When the 1996 Act was adopted, telephone penetration in the U.S. was roughly 95% nationwide.[5] Without question, the goal of connecting subscribers to the network had been reached. Yet Congress included in the 1996 Act specific provisions to permit competitive

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3 *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services,* CC Docket No. 04-111, *Ninth Report,* FCC 04-216 (rel. Sept. 28, 2004) ("*Ninth CMRS Competition Report*"), ¶ 109.

4 *See id.* at ¶ 49.

5 Telephone Subscribership in the United States – Data Through November 1996 (rel. Jan. 1997) at p. 18, Table 3. The document can be accessed on the web at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/subs1196.pdf.

carriers to become ETCs.[6] Congress' goal, to remove implicit high-cost support so as to level the playing field for all carriers could not have been more clear. The entire purpose of the 1996 Act was pro-competition and deregulatory.[7]

Nowhere in the 1996 Act or its legislative history did Congress state that its goal for universal service going forward was to consign any part of rural America to a single monopoly carrier, providing only one technology, subsidized by users of other more efficient or desirable technologies. Far from choosing a preferred technology, Congress directed the FCC to use universal service to provide rural consumers with access ***to the same kinds of telecommunications choices and at similar rates*** available to those in urban areas, consistent with the Act's core mission to promote competition and deregulate telecommunications.[8]

When incumbents challenged the FCC's interpretation of the 1996 Act and its implementation, the Fifth Circuit adamantly upheld the Commission:

> Petitioners' various challenges fail because they fundamentally misunderstand a primary purpose of the Communications Act--to herald and realize a new era of competition in the market for local telephone service while continuing to pursue the goal of universal service. They therefore confuse the requirement of sufficient support for universal service within a market in which telephone service providers compete for customers, which federal law mandates, with a guarantee of economic success for all providers, a guarantee that conflicts with competition.[9]

To date, the FCC and the Courts have consistently upheld the fundamental purpose of the 1996 Act that Congress enacted – to remove support from ILEC rate structures, to open access to

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6 See, 47 U.S.C. Sections 214, 254.

7 "An Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Telecommunications Act of 1996, Pub. L. No. 104-104, preamble, 110 Stat. 56.

8 47 U.S.C. Section 254(b)(3).

9 *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 625 (5th Cir. 2000).

support by competing carriers, and to drive infrastructure investment to provide higher quality competitive services to rural Americans at the earliest possible date.[10]

USCC operates extensively in rural areas. USCC faces exactly the same challenges as those faced by ILECs and identified by the Rural Task Force in its White Paper No. 2.[11] But rural wireless carriers are not on a level playing field with incumbent carriers, who operate under rate of return regulation and a modified embedded cost methodology for calculating support that guarantees a profitable business, while permitting many, if not most, to charge artificially low rates for access to the public switched network. Incumbents also have complete control of the local exchange marketplace.[12]

Some have argued that current federal policy may foster "artificial competition," that is, supporting multiple networks in areas that cannot support even one. Generally, this view is espoused by monopolists and is diametrically opposed to the Act's command to advance universal service in high-cost areas. We can find nowhere in the 1996 Act or its legislative history any expression that the new law was intended to support a single network. Far from it – the FCC has reached precisely the opposite conclusion.[13] Most rural Americans, who literally cry

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10 *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1966, First Report and Order,* 11 FCC Rcd 15499, 15506 (1996) ("*Local Competition Order*") ("The opening of all telecommunications markets to all providers will blur traditional industry distinctions and bring new packages of services, lower prices and increased innovation to American consumers. The world envisioned by the 1996 Act is one in which all providers will have new competitive opportunities as well as new competitive challenges.")

11 *See generally* "The Rural Difference," RTF White Paper #2 at pp. 15-30.

12 Investment industry analysis consistently values rural ILEC businesses higher than RBOCs because of favorable regulatory treatment and higher barriers to entry.

13 See, Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 8802 (1997) ("First Report and Order) ("Our decisions here are intended to minimize departures from competitive neutrality, so as to facilitate a market- based process whereby each user comes to be served by the most efficient technology and carrier. We conclude that competitively neutral rules will ensure that such disparities are minimized so that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers.").

out for improved wireless services and competition for their local exchange carrier, would revolt at such a notion. What is artificial is providing support to a monopoly carrier and, by regulatory fiat, locking out competitors who are ready, willing and able to deliver services that consumers in rural areas are demanding. Restricting access to the fund by competitive carriers in order to control growth of the fund is a solution to a problem that simply does not exist.

In examining state universal service mechanisms that would thwart the 1996 Act's purposes, the FCC has unequivocally ruled that a competitive carrier cannot be expected to enter a market where an incumbent has all the customers and all the support.

> A new entrant faces a substantial barrier to entry if its main competitor is receiving substantial support from the state government that is not available to the new entrant. ***A mechanism that makes only ILECs eligible for explicit support would effectively lower the price of ILEC-provided service relative to competitor-provided service by an amount equivalent to the amount of the support provided to ILECs that was not available to their competitors.*** Thus, non-ILECs would be left with two choices -- match the ILEC's price charged to the customer, even if it means serving the customer at a loss, or offer the service to the customer at a less attractive price based on the unsubsidized cost of providing such service. A mechanism that provides support to ILECs while denying funds to eligible prospective competitors thus may give customers a strong incentive to choose service from ILECs rather than competitors. Further, we believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. In fact, such a carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its state government- imposed competitive disadvantage. ***Consequently, such a program may well have the effect of prohibiting such competitors from providing telecommunications service, in violation of section 253(a)*** (emphasis added).[14]

All but a few states have flatly rejected the incumbents' world view of universal service – that it is a set-aside program for ILECs, with support intended solely to connect subscribers to the telephone network and subsidize existing ILEC operations. USCC has been successful in

[14] *Western Wireless Corporation Petition For Preemption Of Statutes And Rules Regarding The Kansas State Universal Service Fund Pursuant To Section 253 Of The Communications Act Of 1934, Memorandum Opinion & Order*, 15 FCC Rcd 16,227, 16,231 (2000) (footnote omitted).

obtaining ETC status because it has consistently advocated positions that embrace the law that Congress wrote and have only asked for treatment that is consistent with the Act.

As envisioned by Congress, USCC has rapidly accelerated the deployment of telecommunications infrastructure in every area where it has been designated. Rural consumers are seeing improved wireless service, many more areas where 911 and E-911 services are available, economic development opportunities, and the advancement of mobile wireless technologies that have been available in urban areas since the mid-1980's.

This success has not come without a steep price. Incumbent carriers have expended enormous effort to thwart USCC from receiving ETC status so as to promote inter-modal competition. USCC's entry has been significantly delayed the competitive entry that Congress intended to occur, to the substantial detriment of rural consumers. Capital that could have been spent on networks has gone to litigation.

USCC urges the Commission to uphold the law Congress wrote and the many decisions it has rendered to date in implementing the 1996 Act. CETCs are only beginning to deliver the benefits that Congress promised and this proceeding will likely determine whether rural America will continue to see rapid deployment of critical wireless infrastructure that is so vitally needed.

IV. The Current Per-Line Methodology Limits Fund Growth While Forcing Competitors to Invest in Rural Areas in Order to Gain Support.

If a CETC's costs are higher than the ILEC's, whether because it operates inefficiently, uses a less efficient technology for the area in question, or both, a CETC that receives support based on the incumbent's lower costs will not find it financially viable to enter the geographic market and invest in facilities. This is the desired result: a less efficient provider should not be encouraged to enter, nor should its entry be supported. However, when a CETC's costs are equal to or lower than the incumbent's, then it is likely to enter and should be encouraged to do so.

Competitive entry by a lower-cost carrier will inure to the consumer and reduce the need for high-cost support in the long run.

During the transition period during which competitive networks are being constructed, the incumbent's costs are the appropriate benchmark. Once competitive networks are constructed, the better benchmark is the lower-cost provider, which encourages efficiency and sends the correct signal to the marketplace. If a CETC's costs are lower than an incumbent's, it will force the incumbent to become more efficient. If an incumbent refuses to do so during the transition period, it may be unable to retain its ETC status or remain in business long term. This is a natural consequence of competitive markets and Congress has not guaranteed rural ILEC survival. In reality, rural ILECs are well positioned to improve efficiencies, exploit the natural advantages of a wireline network for data, and use wireless technologies to compete with newcomers.

Some commenters wrongly claim that use of the ILEC's per-line support level is a "windfall" for CETCs. In fact, since CETCs must use all available support for the provision of facilities and services,[15] there can be no windfall. Any so-called excess support results in competitive networks being constructed at an accelerated pace. Moreover, since most every newcomer has a much younger network than the incumbent, there are normally very substantial construction projects that must be undertaken to construct and upgrade networks that are capable of competing with incumbents *throughout the service area.*

For example, Midwest Wireless and Rural Cellular Corporation ("RCC") cover substantially all of the rural areas in the state of Minnesota. Collectively, their annualized

15 47 U.S.C. Section 254(e); 47 C.F.R. Section 54.7.

projected support amount is approximately $28 million.[16] The annualized projected high-cost support amount for ILECs serving the same area is close to $85 million.[17] With few exceptions, this pattern is repeated throughout the country.[18] As a CETC, USCC it is expected to respond to all reasonable requests for service with far less available support than ILECs serving the same area. Moreover, no matter how many ETCs are designated, fund growth is effectively capped because there is a finite number of customers and lines available to competitors.

Some have argued that wireless carriers are receiving support for existing customers that were acquired under business plans that did not anticipate universal service support and therefore support should not be paid on existing lines.[19] This argument evidences a fundamental misunderstanding of how the system is intended to work. First, any rational carrier not receiving support is going to begin to construct its network in areas expected to produce profits for the carrier. Any high-cost support that is later received for customer lines in those areas would be used to construct networks outward into other high-cost areas.

Second, if the areas where a rational carrier has constructed are in fact low-cost, then the ILEC has a responsibility to disaggregate support so that uneconomic support levels are not distributed to CETCs. Disaggregation will drive higher per-line support amounts out to higher cost areas, so that CETCs have an appropriate incentive to construct facilities in these areas to the benefit of consumers who need them most.

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16 Source: www.universalservice.org, First Quarter Appendices - 2005 at HC01.

17 *Id.*

18 In Vermont, RCC, an ETC throughout the entire state, is projected to receive roughly $6.5 million in support in 2005. ILECs in Vermont are projected to receive roughly $28 million. (See, http://www.universalservice.org/overview/filings/2005/Q1/default.asp at HC01.

19 *See, e.g.,* OPASTCO Comments at p. 14.

V. Paying Each Carrier on its Own Costs Will Dramatically Increase Fund Growth.

Any method for providing high-cost support based on the CETC's costs would presumably ensure that the competitor could earn a sufficient return on investment. In such a case, it is possible, if not likely, that inefficient investments would be made based on the ability to get high-cost support, irrespective of whether a business case can be made for competitive entry. In USCC's view, this is exactly the wrong result. ILECs may be correct that there are areas where an ILEC's wireline facilities are a natural monopoly – and they should be appropriately compensated for serving them through the high-cost system.

ILECs who argue for support to be paid on a CETC's costs presume that the competitor has a lower cost structure and would presumably require less support. These presumptions may be incorrect and if the wrong choice is made, the fund size is likely to expand rapidly. First, any cost model developed for a competitor's technology must necessarily include the cost of constructing an entire network in the ETC service area, not just the existing network that presumably was constructed without support in lower-cost areas. Second, because in almost every case the CETC has far fewer lines than an incumbent, its per line costs are likely to be far higher.

VI. The Current Methodology for Providing Support to ILECs is Inefficient.

CenturyTel boasts that when it acquires smaller ILEC networks, it routinely spends tens of millions to improve networks "long neglected" and in "disrepair."[20] If true, this completely undercuts ILEC claims that modified embedded costs and rate of return regulation encourage investment and that incumbents are efficient.

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20 CenturyTel Comments at p. 19.

Recently, the USA Today published an article highlighting that some rural ILECs are paying out to their shareholders an annual dividend that exceeds what the shareholders pay for telephone service.[21] In 2004, Citizens Telecommunications paid out a special dividend of $300 million to its shareholders. It took in approximately $110 million in high-cost support. Given the company's federally-funded magnanimity, Citizens' admonition that "[u]niversal service funding is not designed to subsidize companies; it is designed to protect and advance the interests of rural consumers"[22] must be taken *cum grano salis*. Plainly, this system is not forcing ILECs to be accountable.

Many carriers claim that high-cost support is reimbursement for actual costs. Yet the vast majority of rural carriers do not submit cost data to NECA in order to qualify for support, but receive support pursuant to an "average schedule" methodology that requires no information on actual costs. In the recent *en banc* hearing, the Joint Board heard that USAC audits only approximately one ILEC per year. With over 1300 rural carriers, each one will have been audited by sometime around the year 3304 at the current pace.

Nobody knows the actual costs of operation of most rural ILECs and nobody knows whether they are being over- or under-compensated. The current modified embedded cost system does not produce cost data open to analysis and there is evidence that suggests it encourages inefficient investment. For example, the Helix Telephone Company in Oregon serves approximately 500 access lines in two non-contiguous wire centers. Helix applied to the Oregon Public Utility Commission ("OPUC") for a waiver of local number portability ("LNP") requirements because it would be unduly burdensome to replace both of their switches, each at a

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21 *See* "Fees Paid by All Phone Customers Help Rural Phone Firms Prosper," USA Today (11/16/2004), at http://www.usatoday.com/money/industries/telecom/2004-11-15-rural-phone-fees x.htm.

22 Frontier/Citizens Comments at p. 6.

cost of over $250,000.[23] With the availability of soft switches, switch sharing capabilities, and other possible solutions, it is inconceivable that any carrier would invest in two switches amounting to $500,000 to upgrade 500 access lines **if it were in a competitive marketplace**. Another network design almost certainly could provide a more efficient means to offer LNP, but Helix has no incentive to facilitate a choice of service providers for consumers.

In Colorado, PC Telecom claimed that it could not provide LNP because it has not upgraded its equipment in many years. In the course of the proceeding, it was discovered that its subscribers do not yet have "CLASS features," such as caller ID and call waiting, some 20 years after they were introduced in this country. The embedded cost methodology has permitted PC Telecom to collect support without obligation or market force causing it to improve its network.

ILECs consistently claim that the modified embedded cost methodology provides appropriate incentives for carriers to invest in their networks and a move to forward looking costs will dampen such incentives. Yet they have provided almost no evidentiary data to support these claims. Examples of high dividend payouts, inefficient investment plans, and poor facilities, are not difficult to find. Surely there are areas where rural consumers have first rate wireline facilities, however universal service support was intended to ensure that all areas have first rate service and that consumers have a choice in service providers. Wireless carriers seek funds to extend service and compete for consumers who have few or no choices in wireless services. Congress understood full well that competition for support and consumers is the only practical way to encourage efficiencies and innovation from all carriers, to the benefit of rural consumers.

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[23] Helix Telephone Co., Petition for Suspension of Wireline to Wireless Number Portability Obligations, Docket No. UM 1125 at p. 2 (Or. PUC, Jan. 27, 2004) ("Helix Order").

VII. In Order to Limit Fund Growth, The Commission Must Move Rural Carriers to Forward-Looking Costs.

Of all the myths that ILEC lobbyists have perpetuated, perhaps the most egregious is the ILEC contention that competitive ETCs are the "main" cause of growth in the fund. It is becoming clear that this myth, too, is falling away, as even ILECs are beginning to acknowledge that a major factor in fund growth is excessive support to rural telephone companies.[24]

In 1996, the Joint Board recommended basing support for all carriers on a forward-looking cost system. The FCC adopted the Joint Board's recommendation in 1997. A review of the First Report & Order reveals that the Commission carefully considered and unequivocally adopted forward-looking costs as the preferred method for preserving universal service:

> We agree with the Joint Board and many commenters that, in the long run, forward-looking economic cost best approximates the costs that would be incurred by an efficient carrier in the market. We concur with the Joint Board's finding that the use of forward-looking economic costs as the basis for determining support will send the correct signals for entry, investment, and innovation.
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> We agree with the Joint Board that the use of forward-looking economic cost will lead to support mechanisms that will ensure that universal service support corresponds to the cost of providing the supported services, and thus, will preserve and advance universal service and encourage efficiency because support levels will be based on the costs of an efficient carrier.
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> We also agree with the Joint Board that a forward-looking economic cost methodology is the best means for determining the level of universal service support. We find that a forward-looking economic cost methodology creates the incentive for carriers to operate efficiently and does not give carriers any incentive to inflate their costs or to refrain from efficient cost-cutting.
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> We note that California, Ohio, and Pennsylvania are using forward-looking economic cost studies for determining support levels in their intrastate universal service programs.
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> As the Joint Board recognized, to the extent that it differs from forward-looking economic cost, embedded cost provide the wrong signals to potential entrants and existing carriers. The use of embedded cost would discourage prudent investment

[24] *See* Verizon Comments at p. 14.

> planning because carriers could receive support for inefficient as well as efficient investments. The Joint Board explained that when "embedded costs are above forward-looking costs, support of embedded costs would direct carriers to make inefficient investments that may not be financially viable when there is competitive entry."
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> We also agree with CPI that the use of embedded cost to calculate universal service support would lead to subsidization of inefficient carriers at the expense of efficient carriers and could create disincentives for carriers to operate efficiently.[25]

In the 2001 RTF Order, the FCC recognized the difficulties the RTF had in developing a forward looking cost model for rural carriers, but also noted that implementing a model could be done:

> As some commenters point out, the Rural Task Force's analysis of the forward-looking mechanism was based on the results of running the existing high-cost universal service model for rural companies using non-rural inputs. Because it found significant differences in comparing these results with actual company data, the Rural Task Force found that the model was not an appropriate tool for determining forward-looking costs of rural carriers. If inputs based on rural carrier data had been used, however, many of these differences could have been eliminated. Other differences identified by the Rural Task Force with respect to individual companies are generally the discrepancies one would expect when inputs designed for non-rural companies are used for an analysis of rural costs.
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> The Commission has long recognized that the mechanism used to determine forward-looking cost for rural carriers may differ from that used for non-rural carriers. For instance, one could design a forward-looking mechanism for rural carriers that uses different benchmarks and averaging conventions.[26]

In the past three years, the Commission has not actively investigated how to implement a forward-looking cost model that contains rural inputs. No record evidence has been introduced that it cannot be done. There is every reason to believe a forward-looking cost model will be just as accurate, if not more so, than the current modified embedded cost model which permits the

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[25] 12 FCC Rcd at 8899-8901 (footnotes omitted).

[26] *Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11312-11313 (2001) ("*RTF Order*") (footnotes omitted).

vast majority of average schedule carriers to submit no cost data on which support can be properly based. There are undoubtedly substantial inaccuracies and inefficiencies in the current system. Some have postulated that it would be expensive to reform the models developed in the RTF process. It is highly unlikely that the cost of making the forward-looking cost model work properly could be more than a small fraction of the funds being overspent today on the modified embedded cost methodology.

A forward-looking methodology will accomplish one critical objective – eliminating the incentive for ILECs to make inefficient investments in order to garner support. It is critical to note that consumers would be well served because today only CETCs have the proper incentive to invest efficiently. The per-line support mechanism requires CETCs to invest in an area based upon sound market-based principles. If a request for service cannot be accommodated because an investment will be inefficient, then the CETC commits to serve that customer through resale, and as such, forfeits support for that customer.

VIII. Responses to Comments.

We offer the following responses to comments filed on October 15.

CTIA, Nextel, and Western Wireless each present sound proposals for transitioning rural ILECs to forward-looking costs.[27] USCC supports consideration of these commenters' proposals, simply because the use of forward-looking costs will promote efficient investment by incumbents and competitors.[28] The current modified embedded cost system provides excessive support to incumbents and promotes inefficient investment. Consumers in states that support

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[27] *See* CTIA Comments at pp. 21-25; Nextel Comments at pp. 7-9; Western Wireless Comments at pp. 21-30.

[28] In affirming the FCC's forward-looking pricing model for leasing network elements, the Supreme Court noted, "the claim that TELRIC is unreasonable as a matter of law because it simulates but does not produce facilities-based competition founders on fact. The entrants have presented figures showing that they have invested in new facilities to the tune of $55 billion since the passage of the Act (through 2000)" *Verizon v. FCC*, 535 U.S. 467, 122 S.Ct. 1646, 1675 (2002).

rural America should not be over-subsidizing universal service. CenturyTel complains that "the population density in rural area is steadily declining, and there has been no indication that flight from rural areas to relatively urban areas will reverse itself any time soon."[29] One of the root causes of flight to urban areas is antiquated telecommunications infrastructure, which makes many rural areas less attractive to locate businesses that create jobs. The obvious answer to this problem is to promote universal service policies that will enable wireless carriers to accelerate infrastructure investment to improve coverage in rural communities, which will make many areas more attractive for businesses to locate.

CenturyTel also notes that rural consumers have significantly less purchasing power than those in non-rural areas, noting that the median family income in rural areas is $41,102 compared to $54,657 in non-rural areas."[30] This statistic ignores the fact that rural consumers have a significantly lower cost of living and therefore pay proportionately less for all goods and services than do their urban counterparts. The is no shortage of persons living near or below the poverty line in our nation's urban areas, and they pay significantly more for basic wireline telecommunications services, including a federal universal service charge to subsidize their rural counterparts, including those who are wealthy.

CenturyTel improperly asks the Joint Board to look solely at the rates for local service, when the real inequities are in the amounts wireline consumers pay for toll calls. CenturyTel and other rural ILECs offer comparatively small local calling areas for basic service, advertising "unlimited" calling to only a few thousand, or even a few hundred other numbers. Every other call incurs toll. Meanwhile, high-cost support has enabled USCC to drive competitively priced

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29 CenturyTel Comments at p. 5.

30 Id.

rate plans into rural areas to provide consumers with the choices they are demanding. The Commission should consider whether rural areas that have very low basic telephone rates, sometimes below $10.00 per month, are being over-subsidized[31] and why competitive choices that inter-modal competition bring should be retarded by forcing competitive carriers into ILEC rate structures in order to gain support.

CenturyTel states that "[T]raditional wireline telecommunications carriers have for the first time in history suffered from a reduction in the total number of lines served and minutes of use per line."[32] As a result, "Rural carriers rely more heavily than non-rural carriers on access charges to assist in keeping rates affordable for their customers."[33] While it is true that wireless minutes of use and household spending have outstripped wireline usage, and household spending, it is misleading to assert that access charges keep rates affordable. It may be more accurate to state that access charges keep basic service (i.e., service that permits local calling to comparatively few other numbers) at artificially low, or even below-cost rates. Of course, consumers pay higher rates for intra-state toll calls, some of which are only a few miles in distance, while every other user of the network must contribute to CenturyTel's rate structure by paying its confiscatory access charge rates.

CenturyTel also emphasizes carrier of last resort ("COLR") as one of the "unique challenges" facing it and other rural ILECs.[34] Many ILECs claim that COLR obligations are a

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[31] *Alenco*, supra, 201 F.3d at 620.

[32] CenturyTel Comments at p. 11.

[33] Id. at p. 12.

[34] *Id.* at pp. 7, 8, 9, 10, 12, 16. GVNW Consulting, Inc ("GVNW") even goes so far as to state that "one's view of equity is influenced primarily by whether one is an ILEC providing ubiquity or a CLEC meeting less stringent standards." GVNW Comments at p. 15. A more apposite phrasing would be that "one's view of equity is influenced primarily by whether one is a wireless CETC that is accustomed to competition and has the incentive to

burden, yet in many states ILECs use COLR rules to their advantage. In most states, the obligation to serve is not absolute and most often ILECs are permitted to levy a construction charge in their tariffs, which denies service to consumers unwilling to pay it. In some areas of the country, especially tribal lands, household telephone penetration levels are well below acceptable standards, in some cases below 50%. In other areas, ILECs have held orders[35] and have vigorously opposed state proposals to extend service to requesting consumers.[36] Wireless ETCs have a similar obligation to provide service upon reasonable request, and they must commit to step in and serve the entire area should the wireline carrier relinquish its ETC status[37].

OPASTCO and GVNW, finding little to hang their hats on in the Act, appellate court decisions, and the FCC's orders, cite a state case to support the faulty proposition that "providing CETCs with the ILEC's cost-based support is not competitively neutral."[38] Both commenters fail to mention that the *Bluestem* decision of the Kansas District Court of Nemaha County is now on appeal before the Kansas Supreme Court. Moreover, *Bluestem* is inapposite because the case involved not the 1996 Act, but a state telecommunications statute which expressly provides that state universal service support for all carriers is to be calculated on the basis of each carrier's embedded costs. K.S.A. 66-2008(e). The case is not relevant to a determination of how *federal*

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acquire and keep consumers along with the accompanying per-line high-cost support, or an ILEC that has allowed itself to become dependent on rate-of-return regulation and access to explicit and implicit subsidies."

35 For example, on information and belief, ILECs have hundreds of held orders in rural New Mexico.

36 USCC is aware of such cases in Minnesota and Washington.

37 *See, e.g., Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming,* 16 FCC Rcd 48, 56 (2000) ("*Western Wireless*"), *recon. denied*, 16 FCC Rcd 19144 (2001); *Guam Cellular and Paging, Inc. d/b/a Guamcell Communications,* CC Docket No. 96-45, DA 02-174 (C.C.B. rel. Jan. 25, 2002) at ¶ 17 ("*Guamcell*"); *Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota,* 16 FCC Rcd 18133, 18139 (2001) ("*Pine Ridge*").

38 *See* OPASTCO Comments at p. 13; GVNW Comments at p. 15.

universal service support should be distributed in light of the pro-competitive purposes of the 1996 Act. In addition, if it is affirmed by the Kansas Supreme Court, the fact that the law may violate the *Kansas Preemption Order* cited above makes it subject to possible federal preemption.

TCA estimates that 100% of lost federal support as a result of reform would have to be replaced by an increase in state support.[39] This presumes that ILECs actually need every dollar of support they receive today. Yet TCA presents absolutely no analytical evidence that ILECs would be forced to increase their prices by the amount of federal support lost due to reform. In fact, the true revenue requirement for the vast majority of average schedule companies cannot be determined. A carrier may be able to increase operational efficiencies, seek out other sources of revenues, or in some cases, lower its dividend. Only by introducing incentives for all carriers to operate efficiently will fund growth be controlled.

IX. Conclusion

Eight years ago, when the FCC released its first universal service order, then Chairman Reed Hundt set forth the Commission's course for universal service policy, stating:

> Ultimately, we all know that our success will not be measured by whether we have pleased one company or another, or one member of Congress or another. It will be measured by whether, five years from now, American citizens, whether in their businesses or in their homes, have a greater choice of communications providers and services than ever before. If, in five years, there are at least a handful of different companies knocking on doors competing to win the business of the households or companies, then our efforts will have succeeded. What people buy, how they pay, what they get, will all be different. But if we do right consumers will get more for their money. And if there are many sellers of services – and not just monopolies – then our efforts will have succeeded.[40]

[39] TCA Comments at p. 7.

[40] Speech by FCC Chairman Reed Hundt to National Association of Regulatory Utility Commissioners, February 27, 1996: Questions and Consequences: How do we get to the right answers?

USCC urges the Joint Board to make decisions that will fulfill the command of Congress to focus on consumers, not carriers, and thereby drive choices in telecommunications services to rural consumers across the country.

Respectfully submitted,

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